

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD CLEMONS,

Petitioner,

Case No. 03-CV-70712

v.

HON. AVERN COHN

TIM LOUMA,

Respondent.

/

ORDER DENYING MOTION FOR A CERTIFICATE OF APPEALABILITY

I.

Petitioner filed a "Motion for Relief from Judgment Based on Post-Judgment Change in Law" under Federal Rule of Civil Procedure 60(b), concerning this Court's dismissal of his habeas corpus petition on statute of limitations grounds in October, 2003. Petitioner argued that the Court should reverse its prior dismissal because he was denied legal counsel on appeal and he is actually innocent (such that the limitations period should be equitably tolled). These arguments were previously raised by Petitioner and rejected by the Court, but Petitioner cited the United States Supreme Court's decision *Halbert v. Michigan*, ___ U.S. __ 125 S. Ct. 2582 (June 23, 2005), and the United States Court of Appeals for the Sixth Circuit's decision in *Souter v. Jones*, 395 F.3d 577 (6th Cir. 2005), to assert that the Court erred in concluding that his habeas petition is barred by the one-year statute of limitations set forth at 28 U.S.C. § 2244(d). The Court denied the motion. See Order Denying Motion for Relief from Judgment Based on Post-judgment Change in Law, filed September 6, 2005.

Petitioner seeks to appeal the Court's decision and requests a certificate of appealability.

II.

Before Petitioner may appeal this Court's dispositive decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. See 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.2d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. When a federal district court denies a habeas claim on procedural grounds without addressing the claim's merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petition should be allowed to proceed further. In such a circumstance, no appeal is warranted. *Id.*

Petitioner's motion for relief from judgment, although brought under Federal Rule of Civil Procedure 60(b), actually sought reconsideration of this Court's dismissal of his habeas petition. Although Petitioner cited new case law, the Court explained why the new case law did not entitle him to relief under Rule 60(b), as he has not shown that this Court erred in finding his habeas claims barred by the one-year statute of limitations

As such, Petitioner has not made a substantial showing of the denial of a constitutional right as to the denial of his motion for relief from judgment, nor has he demonstrated that reasonable jurists would find it debatable that his habeas claims are barred by the statute of limitations.

Accordingly, Petitioner's motion for a certificate of appealability is DENIED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: September 16, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 16, 2005, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160